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Filing date: **10/07/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Orange Partners, LLC d/b/a Healthy Home Association		
Entity	Limited Liability Company	Citizenship	Oklahoma
Address	7152 N.W. 112st Oklahoma City, OK 73162 UNITED STATES		

Attorney information	Matthew H. Swyers The Trademark Company, PLLC 344 MAPLE AVENUE WEST, PBM 151 VIENNA, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com Phone:(800) 906-8626 x100
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Registration Subject to Cancellation

Registration No	3918354	Registration date	02/15/2011
Registrant	Newmark Homes, L.P. 1470 First Colony Boulevard Sugar Land, TX 77479 UNITED STATES		

Goods/Services Subject to Cancellation

Class 037. First Use: 2001/07/31 First Use In Commerce: 2001/07/31 All goods and services in the class are cancelled, namely: construction of one-to-four family residences
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Grounds for Cancellation


Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	76399409	Application Date	04/24/2002
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HEALTHY HOME		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 1997/02/07 First Use In Commerce: 1997/02/07 Entertainment services, namely a series of television programs on subjects such as Architecture and living spaces, health and lifestyle issues, recycling and conservation, community involvement, homebuying, building styles and trends, home repair and renovation, remodeling, home-improvement, decorating, art, interior, exterior design, termite, insect, and fungi control

U.S. Registration No.	3641537	Application Date	12/07/2001
Registration Date	06/23/2009	Foreign Priority Date	NONE
Word Mark	HEALTHY HOME		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 040. First use: First Use: 1995/02/07 First Use In Commerce: 1997/01/12 providing custom chemical, filtration, electrical or mechanical processes of materials, products and soil in and around buildings for controlling subterranean termites and insects		

U.S. Registration No.	4742213	Application Date	05/20/2014
Registration Date	05/26/2015	Foreign Priority Date	NONE
Word Mark	HEALTHY HOME		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 036. First use: First Use: 1995/02/07 First Use In Commerce: 1995/02/07 Providing insurance and warranty protection that a home/building has been constructed with healthier, safer products

U.S. Registration No.	2715218	Application Date	12/07/2001
Registration Date	05/13/2003	Foreign Priority Date	NONE
Word Mark	THERE'S NO PLACE LIKE A HEALTHY HOME		
Design Mark	THERE'S NO PLACE LIKE A HEALTHY HOME		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2001/10/28 First Use In Commerce: 2001/11/30 Advertising and marketing for home builders, manufacturers and others' health products and services via radio, direct mail, television computer		

U.S. Application No.	86542663	Application Date	02/23/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HEALTHY HOME		
Design Mark	HEALTHY HOME		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1997/00/00 First Use In Commerce: 1997/00/00 Home inspections		

Attachments	76399409#TMSN.png(bytes) 76346173#TMSN.png(bytes) 86286546#TMSN.png(bytes) 76345665#TMSN.png(bytes) 86542663#TMSN.png(bytes) Petition to Cancel.pdf(108383 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Matthew H. Swyers/
Name	Matthew H. Swyers
Date	10/07/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

In the matter of U.S. Registration No. 3,918,354;
For the mark **THE HEALTHIER HOME** ;
Registered on the Principal Register on February 15, 2011.

Orange Partners, LLC	:	
d/b/a Healthy Home Association,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. _____
	:	
Newmark Homes, L.P.,	:	
	:	
Registrant.	:	

PETITION TO CANCEL

Petitioner, Orange Partners, LLC d/b/a Healthy Home Association (hereinafter “Petitioner”), a Oklahoma Limited Liability Company, located and doing business at 7152 N.W. 112st, Oklahoma City, Oklahoma 73162 believes that it is and will continue to be damaged by the continued registration of U.S. Registration 3,918,354 for the mark **THE HEALTHIER HOME** used in connection with the services identified in International Class 37 and accordingly, hereby petitions this honorable tribunal to cancel the same pursuant to 15 U.S.C. § 1064 and 37 C.F.R. § 2.111(b).

Grounds for Cancellation

As grounds for the instant Petition to Cancel, it is alleged that the continued registration of Registrant, Newmark Homes, L.P. composed of Newmark Home Corporation’s (hereinafter “Registrant”) mark: **THE HEALTHIER HOME** (hereinafter “Registrant’s Mark”), as more fully displayed in U.S. Registration Nos. 3,918,354 would be likely to cause confusion with Petitioner, Orange Partners, LLC d/b/a Healthy Home Association’s (hereinafter “Petitioner”)

mark: **HEALTHY HOME** (“Petitioner’s Mark”), as more fully identified in Application Serial No. 76/399,409, which retains priority of use over Registrant’s Mark by virtue of its prior use in commerce in the United States. Furthermore, the mark **THE HEALTHIER HOME** was abandoned and is no longer in use by the Registrant, a related entity, assignee, or successor in interest, in connection with the goods identified in International Class 37 on U.S. Registration No. 3,918,354.

Statement of Facts

In support for the instant Petition to Cancel, it is alleged that:

1. For many years, Petitioner has been and now is engaged in Entertainment services, namely a series of television programs on subjects such as Architecture and living spaces, health and lifestyle issues, recycling and conservation, community involvement, home buying, building styles and trends, home repair and renovation, remodeling, home-improvement, decorating, art, interior, exterior design, termite, insect, and fungi control.

2. Specifically, Petitioner is the owner of the mark: **HEALTHY HOME** (hereinafter “Petitioner’s Mark”), as more fully identified in U.S. Application Serial No. 76/399,409 filed on or about April 24, 2002 for use in connection with the following services, namely: “Entertainment services, namely a series of television programs on subjects such as Architecture and living spaces, health and lifestyle issues, recycling and conservation, community involvement, home buying, building styles and trends, home repair and renovation, remodeling, home-improvement, decorating, art, interior, exterior design, termite, insect, and fungi control” covered in International Class 41 (hereinafter “Petitioner’s Services”). Petitioner’s Application claims a date of first use in commerce of Petitioner’s Mark in connection with Petitioner’s Services of February 7, 1997.

3. Petitioner is also the owner of the United States Patent and Trademark Registration No. 3,641,537 which was registered on June 23, 2009 for the mark **HEALTHY HOME**, used in connection with “providing custom chemical, filtration, electrical or mechanical processes of materials, products and soil in and around buildings for controlling subterranean termites and insects” in International Class 40. The Registration maintains a date of first use of February 7, 1995 and a date of first use in commerce of January 12, 1997.

4. Petitioner is also the owner of the United States Patent and Trademark Registration No. 2,715,218 which was registered on May 26, 2015 for the mark **THERE'S NO PLACE LIKE A HEALTHY HOME**, used in connection with “Advertising and marketing for home builders, manufacturers and others' health products and services via radio, direct mail, television computer” in International Class 35. The Registration maintains a date of first use of October 28, 2001 and a date of first use in commerce of November 30, 2001.

5. Petitioner is also the owner of the United States Patent and Trademark Registration No. 4,742,213 which was registered on May 26, 2015 for the mark **HEALTHY HOME**, used in connection with “Providing insurance and warranty protection that a home/building has been constructed with healthier, safer products” in International Class 36. The Registration maintains a date of first use in commerce of February 7, 1995.

6. Petitioner is also the owner of the mark: **HEALTHY HOME**, as more fully identified in U.S. Application Serial No. 86/542,663 filed on or about February 23, 2015 for use in connection with the following services, namely: “Home inspections” covered in International Class 42. Petitioner’s Application claims a date of first use in commerce of Petitioner’s Mark in connection with Petitioner’s Services of 1997.

7. Petitioner's use of Petitioner's Marks for Petitioner's Services in commerce has been continuous since at least as early as February 7, 1997.

8. Petitioner has invested significant sums of money in the promotion of Petitioner's Mark and the Petitioner's Services in the United States.

9. As a result of the aforesaid, Petitioner has developed a valuable reputation and goodwill in Petitioner's Mark and has achieved a following among the relevant consuming public prior to the filing, registration and/or priority date of Registrant's Application to register the mark: **THE HEALTHIER HOME**.

10. By an Office Action dated October 15, 2002, the Examining Attorney issued a notice that if one or more applications matured into a registration the examining attorney may refuse registration based upon the examining attorney's opinion that, if registered, Petitioner's Mark may be likely to create a likelihood of confusion with Registrant's mark for **THE HEALTHIER HOME** as more fully identified in U.S. Serial No. 76/395,230, under Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

11. Based upon information and belief, Registrant, Newmark Homes, L.P. ("Registrant") is a Texas Partnership composed of Newmark Home Corporation located and doing business at 1470 First Colony Boulevard, Sugar Land, Texas 77479.

12. Upon information and belief, Registrant filed its application to register Registrant's Mark on or about April 15, 2002 for use in connection with the following services, namely: "construction of one-to-four family residences" covered in International Class 37 (hereinafter "Registrant's Services").

13. Registrant's Application for Registrant's Mark received U.S. Serial No. 76/395,230.

14. Registrant's Application for Registrant's Mark published for opposition on or about November 30, 2010.

15. On or about February 15, 2011, Registrant's Mark was registered on the Principal Register and received U.S. Registration No. 3,918,354.

16. Registrant's Registration claims a date of first use in commerce of Registrant's Mark for Registrant's Services of July 31, 2001.

17. Upon information and belief, Registrant has ceased use of the mark **THE HEALTHIER HOME** in connection with the services covered in International Class 37 as more fully identified on U.S. Registration No. 3,918,354.

18. Upon information and belief Registrant does not retain intent to resume use of the Registrant's Mark in connection with Registrant's Services as more fully identified on U.S. Registration No. 3,918,354.

19. As such, Petitioner's rights in Petitioner's Mark have priority of use over Registrant's rights in Registrant's Mark, inasmuch as Petitioner commenced its use of the mark **HEALTHY HOME** in connection with Petitioner's Services in interstate commerce prior to the filing, registration, and/or priority of use date of the Registrant's registration and use of the mark **THE HEALTHIER HOME**.

20. Petitioner believes that if consumers were confronted with the Registrant's Mark they will inevitably be confused and deceived into the mistaken belief that the Registrant's Services have their origin or are in some manner connected with the Petitioner and/or Petitioner's Services offered under Petitioner's Mark.

21. The continued registration of Registrant's marks confers upon Registrant rights to which it is not entitled and is inconsistent with the prior established rights of Petitioner in Petitioner's Mark.

22. Petitioner believes that it will be damaged by Registrant's continued registrations insofar as Petitioner's Mark will not be permitted to register while Registrant's registration remains in effect.

23. By reason of the foregoing, the Petitioner will be seriously damaged by the continued registration of Registrant's Mark: **THE HEALTHIER HOME**.

WHEREFORE in consideration of Petitioner's prior rights to the mark **HEALTHY HOME** and in consideration that the mark **THE HEALTHIER HOME** is no longer in use and has been abandoned without the intent to resume use, Petitioner, by counsel, prays that the instant petition be granted and U.S. Registration 3,918,354 be cancelled.

Respectfully submitted this 7th day of October, 2015.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/
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Counsel for Petitioner

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

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For the mark **THE HEALTHIER HOME** ;
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Orange Partners, LLC	:	
d/b/a Healthy Home Association,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. _____
	:	
Newmark Homes, L.P.,	:	
	:	
Registrant.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing this 7th day of October, 2015
to be served, via first class mail, postage prepaid, upon:

Newmark Homes, L.P.
1470 First Colony Boulevard
Sugar Land, TEXAS 77479

And

Barry Snowden
Morris, Lendais, Hollrah & Snowden
1980 Post Oak Blvd Ste 700
Houston, Texas 77056

/Matthew H. Swyers/
Matthew H. Swyers